IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 7TH JUNE 2006 / 17TH JYAISHTA, 1928

MFA.No. 1265 of 1993()

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WCC.160/1992 of W.C.C.,THRISSUR

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APPELLANT:

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UNITED INDIA INSURANCE COMPANY LTD.,
SREEKUMAR BUILDINGS, CHALAKUDY, REPRESENTED BY THE
MANAGER, UNITED INDIA INSURANCE CO. LTD.,
MOTOR THIRD PARTY CLAIMS OFFICES,
VETTUKATTIL BUILDINGS, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.N.NANDAKUMARA MENON

RESPONDENTS:

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1. P.K.VASU, PALAKKAL HOUSE,
VARANTHARAPPILLY, THRISSUR.

2. RETHNAMANI, W/O.VASU, PALAKKAD HOUSE,
VARANTHARAPPILLY, THRISSUR.

3. SRI.AUGUSTINE, S/O.POULOSE,
PUDUSSERY HOUSE, NADUVATTAMKARAYIL HOUSE,
MANJAPRA VILLAGE, VARANTHARAPPALLY, THRISSUR.(EXPARTE).

4. K.P.SHAJI, KARIMBANACKAL HOUSE,
PADUVAPURAM P.O.-683 582.(EXPARTE).

BY ADV. SRI.GRASHIOUS KURIAKOSE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/06/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.4321 OF 1993 IN MFA.1265 OF 1993:

DISMISSED.

Sd/-

7.6.1993 K.HEMA, JUDGE

/TRUE COPY/

P.A.TO JUDGE

**K.HEMA, J.**

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**M.F.A.No. 1265 of 1993**

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**Dated this the 7th day of June, 2006**

**JUDGMENT**

The deceased Gokulan, admittedly, sustained an employment injury on 2.11.1991, in a motor accident. He was driving a jeep, which was insured with the appellant-Insurance Company. He was under treatment on 2.11.1991 onwards for the employment injury sustained by him arising out of and in the course his employment under the first respondent. The first respondent did not contest the matter nor raise any dispute with regard to the relationship between the employer and deceased Gokulan and the sustaining of injury in the accident on 2.11.1991.

2. After about 13 days of sustaining the injury, on 15.11.1991, Gokulan died. But, the death was as a result of a train accident. According to Insurance Company, it is a suicide and the death was not consequent to the employment injury. The question is whether the employer is liable to pay compensation under Section 3 read with Section 4A of the Workmen Compensation Act ('the Act', for short) and consequently, the Insurance Company becomes liable to pay the compensation.

3. The parents of deceased Gokulan filed an application under Section 22 of the Act before the Commissioner for Workmen's Compensation claiming compensation for the death caused to deceased Gokulan, as a consequence of the personal employment injury sustained by him. The first accident was on 2.1.1991, while the deceased was driving a jeep. The said jeep is insured with the appellant-Insurance company. Appellant filed a written statement before the Commissioner and contended that they have no liability to pay compensation, since the cause of death was due to the running over by a train and not due to the motor accident which occurred on 2.11.1991. The employer was set ex-parte.

4. Before the Commissioner Aws 1 and 2 were examined and Exhibits A1 to A7 were marked on the side of the claimants. The respondents did not adduce any evidence. The evidence consist of oral testimony of the first applicant and that of the doctor who treated the deceased Gokulan. Medical records, F.I.R, postmortem certificate, inquest report etc. were marked.

5. On an evaluation of the evidence, the Commissioner found that there was a suicide which was the result of the head injury affecting the brain and resultant depressive psychosis suffered by the deceased Gokulan. The Commissioner also found that the deceased committed suicide due to frustration on 15.11.1991, due

to the injury to brain, leading to depressive psychosis. The Commissioner found that the claimants are entitled to Rs.87,980/- as compensation and the Insurance Company was directed to pay the same. The above order is under challenge.

6. Learned counsel appearing for the appellant vehemently contended that the cause of death in this case is not as a result of the injury sustained in the course of the employment and therefore, as per Section 3 of the Act, the employer is not liable to compensate and consequently, the insurer is not liable. A reading of Section 3 of the Act shows that the employer is liable to pay compensation in accordance with the provisions in Chapter II of the Act, if personal injury is caused to a workman by accident arising out of and in the course of his employment. The fact that the deceased Gokulan is a workman working under the third respondent, is not disputed. The fact that personal injury is caused to him by an accident by a motor accident arising out of and in the course of employment also is not disputed. These facts are proved by evidence also.

7. Exhibit A6 is a medical certificate issued by a doctor certifying that the deceased Gokulan was admitted in the hospital on 2.11.1991, following road traffic accident at Amballoor with certain injuries described therein. Among other injuries, the deceased Gokulan also sustained head injury. Therefore, it is established by

the claimants that personal injury caused to the workman by a motor accident involving a jeep arising out of and in the course of his employment with the third respondent. If such an injury is caused, the amount of compensation payable for such injury has to be computed as per the provisions contained in Section 4 of the Act.

8. As per Section 4 of the Act, amount of compensation in respect of the death, permanent total disablement and permanent partial disablement are to be paid as provided in Section 4 of the Act. In the case of death resulting from the injury, an amount equal to 40% of the monthly wages of the deceased workman multiplied by the relevant factor stated in Explanation-I has to be paid. Therefore, to make an employer or insurer liable for payment of compensation under Section 3 of the Act read with Section 4 , the claimant has to establish that the death resulted from the injury sustained by an accident arising out of and in the course of his employment. The liability under Section 4(1)(a) arises only if the injury is caused by an accident arising out of and in the course of the employment and the death has resulted from such injury.

9. The dispute here is with respect to the cause of death. While the appellant would contend that the death of the deceased Gokulan is not resulted from the injury sustained by him by an

accident arising out of and in the course of his employment, the respondent-claimants would contend that the death was a direct consequence of the injury sustained by the workman under the circumstances stated in Section 3 of the Act. Learned counsel appearing for the appellant submitted that the death in this case was a suicide which occurred on 15.11.1991, whereas the motor accident in which the deceased Gokulan sustained injury has taken place on 2.11.1991. There are two accidents and two types of injuries arising from these two accidents on two different dates and hence it was strongly argued that the employer is not liable to pay compensation for the death which resulted from the second accident and as a consequence of the injury sustained in the second accident.

10. Learned counsel appearing for the appellant also argued that as per law, there must be evidence to show that the death was a direct result of the injury and a suicide, which has taken place much after the accident because of some mental tension or depression suffered by the deceased, cannot give rise to any liability for the employer to pay compensation. He has placed reliance upon the decision reported in ***Mackinnon M. & Co. Miss Velma*** (AIR 1964 CAL. 94). It was held therein that if the suicide is occurred by brooding over or worrying over the accident which occurred as a result of such mental strain, it cannot be said that the death resulted

because of the injury sustained.

11. To resolve the controversy it is necessary to extract the relevant provisions of the Act. Section 3 of the Act reads as follows:

> "Section 3. **Employer's liability for compensation.**
>
> (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:
>
> **PROVIDED** that the employer shall not be so liable-
>
> (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;
>
> (b) in respect of any injury, not resulting in death, or permanent total disablement caused by an accident which is directly attributable to-
>
> (i) the workman having been at the time thereof under the influence of drink or drugs, or
>
> (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
>
> (iii) the willful removal or disregard by the workman of any safety guard or other device he knew to have been provided for the purpose of securing the safety of workman,
>
> xxx xxx"

Section 4 reads as follows:

"Section 4. **Amount of compensation**

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) where death results from the injury an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor;

or

an amount of eighty thousand rupees, whichever is more;

(b) Where permanent total disablement results from the injury an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor;

or

an amount of ninety thousand rupees, whichever is more.

Explanation I: For the purpose of clause (a) and clause (b) "relevant factor" in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

xxx xxx"

12. A reading of the above provisions will show that the employer's liability arises only if it is established that the death

resulted from the injury which was caused by an accident which arise out of and in the course of the employment. Admittedly, there was a motor accident on 2.11.1991 and the deceased Gokulan sustained injuries as revealed by Exhibit A6. This injury includes a head injury. The question is whether such injury had anything to contribute to the death, either directly or indirectly. Learned counsel for the respondents-claimants contended that the deceased Gokulan sustained a head injury, as a result of which he had developed some mental disease for which he had taken treatment at the Primary Health Centre and he was treated by a Government Medical Officer, AW2.

13. AW2 gave evidence that the mental illness suffered by the deceased Gokulan is depressive psychosis and he had also issued a certificate as Exhibit A7 that the deceased was under his treatment for depressive psychosis from 12.11.1991 onwards. He gave evidence that Exhibit A1 is the prescription issued and Exhibit A1 shows that it was issued on 12.11.1991. He had noted that the patient was suffering from depressive psychosis. He deposed that the head injury will result in brain damage and as a consequence, the patient may develop depressive psychosis. He also deposed that the patient sustained a head injury on 2.11.1991, following the road traffic accident and that this head injury could be the cause of

depressive psychosis. The evidence of AW1 will thus establish that the depressive psychosis, which is suffered by the deceased Gokulan, could be the result of the head injury sustained by the deceased on 2.11.1991 by the motor accident which arise out of and in the course of his employment.

14. There is no reason to reject the evidence given by AW2. AW2 is an independent Government doctor, who has no motive to speak in favour of the claimant. Nothing is brought out in his cross-examination that he w perjuring in favour of the claimants. He deposed that he was working in the Government Hospital, Pudukkad on the date on which he has examined the deceased Gokulan and issued Exhibit A11. He was cross examined with reference to his specialisation. He admitted that he is not a specialist in the branch of psychiatry. Though his competency to prescribe medicine etc. were challenged, the doctor asserted that he is competent to treat any patient.

15. Even though AW2 admitted that he is not a specialist in the branch of psychiatry, that will not be sufficient to hold that he is not competent to treat and prescribe medicines, as per Exhibit A1. I do not find any reason to reject the opinion given by AW2, when he said that the head injury sustained by the deceased Gokulan could be the cause for the mental disorder which was suffered by the

deceased. Nothing is brought out in the cross-examination to show that the deceased Gokulan was suffering from any mental disorder prior to the accident.

16. Learned counsel for the appellant submitted that the records in this case will reveal that the deceased Gokulan was a mental patient who was depressed due to the accident and this fact is revealed from the statement given by one Raghavan. He has placed reliance upon Exhibit A3. Exhibit A3 contains photostat copy of the inquest report also. The said inquest report will reveal that at the time of inquest, one Raghavan was questioned by the Police Officer and a statement was recorded. As per his statement, deceased Gokulan was the son of his cousin. He had given a statement that two months prior to the inquest, the deceased Gokulan had some mental illness and he was under treatment by Dr.Mohandas. Placing reliance upon this statement, it was vehemently contended that the mental illness and the consequent suicide etc. are all result of mental disorder.

17. The above argument cannot be accepted for the reason that no reliance can be placed on the statement allegedly given by said Raghavan to the police which is incorporated in the report, especially since it is not legally proved. Without examining the author of the statement or the person who recorded the statement

and without confronting the relevant portion of the statement to the person who allegedly gave the statement, it will not be legal or proper for any court to rely upon the contents of such statement and to enter a finding that the deceased Gokuklan had some mental problem, two months prior from the date of the inquest. I am not inclined to place reliance upon the statement alleged to have been given by Raghavan to enter a finding against the claimant, since such statement is not legally admissible in evidence. As I have already held, evidence is lacking with respect to the fact whether the deceased Gokulan had any mental illness prior to the motor accident. Therefore, going by the evidence given by AW1 and AW2, it has to be concluded as held by the Commissioner in the impugned judgment that the deceased Gokulan sustained an injury in the motor accident which resulted in a mental illness.

18. The next question is whether the death caused to deceased Gokulan was as a result of the injury. From the facts already discussed, it can be inferred that the death had some connection with the injury. In other words, the injury sustained in the course of employment and by an accident arising out of employment, has produced some mental disorder on deceased Gokulan which has led him to commit suicide and the death is caused due to such act which was precipitated by the mental

disorder as revealed from the medical evidence given in this case.

19. But then the question is whether such a remote possibility of the injury causing the death is sufficient or not for making a claim under Sections 3 and 4 of the Act. It is clear from the evidence that the death has not been direct result of the injury which was caused in the motor accident arising out of and in the course of employment. The said injury has only caused a mental disorder and consequently the suicide and death. Whether such remote connection is sufficient for making the employer liable to pay the compensation or not is the crucial question.

20. As argued by learned counsel for the appellant, if an accident happens and the insured suffers from some mental worry by brooding over etc. as per the dictum laid down in the decision referred above, death may not be construed as one resulted as a direct result of the injury. I am not expressing any opinion on the dictum laid down in the said decision. But on the facts of this case, the evidence is clear in respect of the fact that the injury sustained in the motor accident had some direct connection with the death caused to the deceased Gokulan. Though it may appear that the death and injury has only a remote connection, going by the sequence of events, such as the date of sustaining of the injury, the treatment received from the Awani Hospital following the road traffic

accident, the treatment received from the Government Hospital at the hands of AW2 for the mental disorder on 12.11.1991, and the suicide which occurred three days immediately thereafter etc. all will lead to the conclusion that the time factor between the motor accident and the suicide is of not much relevance to conclude that the death was not a result of the injury sustained in the course of the employment. In my view, the connection between the injury sustained in the motor accident and the death as revealed from evidence in this case is sufficient to hold that the employer is liable to pay compensation for the death caused to the deceased Gokulan, as a result of the injury sustained by him in the motor accident and the consequent mental disorder suffered by him which has led to his suicide. In the above circumstances, I hold that the court below has not committed any illegality in awarding compensation against the appellant. I do not find any reason for interference.

This appeal is dismissed.

**K.HEMA, JUDGE**

vgs.

**K.HEMA, J.**

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**M.F.A.NO.1265 OF 1993**

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**JUDGMENT**

**7.6.2006**